

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS, AMENDING FRISCO CODE OF ORDINANCES CHAPTER 54, ARTICLE II AND ORDINANCE NO. 00-12-12 REGULATING SMOKING; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City Council of the City of Frisco, Texas ("City Council") has investigated and determined that Chapter 54, Article II of the City of Frisco, Texas ("Frisco"), Frisco Code of Ordinances and Frisco Ordinance No. 00-12-12, which sets out to improve and protect the public's health by eliminating smoking in public places and places of employment and guarantees the right of nonsmokers to breathe smoke-free air should be amended; and

WHEREAS, the City Council finds that any food products, retail or service establishment serving the general public that provides a designated smoking area with an installed functional air purification system or functional separate ventilation system on the effective date of this Ordinance, as required by Frisco Ordinance No. 00-12-12, and which installed said system less than five (5) years prior to the effective date of this Ordinance shall be entitled to the benefit of the use of their investment for a period up to five (5) years before being required to prohibit smoking in compliance with this Ordinance; and

WHEREAS, the City Council finds that it will be advantageous, beneficial and in the best interest of the citizens of Frisco to amend Chapter 54, Article II of the Frisco Code of Ordinances as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: Findings Incorporated and Renaming of Article II, Chapter 54. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein. Article II of Chapter 54 of the Frisco Code of Ordinances, entitled "Smoking in Public Places" is hereby renamed "Article II. Regulation of Smoking".

SECTION 2: Amendment to Frisco Code of Ordinances, Chapter 54, Article II (Regulation of Smoking), Section 54-19 (Definitions) and Frisco Ordinance No. 00-12-12. Frisco Ordinance No. 00-12-12 and Frisco Code of Ordinances, Chapter 54, Article II (Regulation of Smoking), Section 54-19 (Definitions) is hereby amended to add the following definitions, to be inserted in alphabetical order:

Employee means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any persons who volunteers his or her services for a nonprofit entity.

Employer means any person, partnership, entity, corporation, including a municipal corporation, or nonprofit entity, which employs the services of one or more individual persons or entities.

Place of employment means any enclosed area under the control of public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a licensed child care, adult day care or health care facility.

Sports arena means sports stadiums, sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

SECTION 3: Amendment to Frisco Code of Ordinances, Chapter 54, Article II (Regulation of Smoking), paragraph (a) of Section 54-20 (Smoking Prohibited in Certain Public Areas), and Frisco Ordinance No. 00-12-12. Frisco Code of Ordinances, Chapter 54, Article II (Regulation of Smoking), paragraph (a) of Section 54-20 (Smoking Prohibited in Certain Public Areas) is hereby amended to read as follows:

54-20. Smoking Prohibited in Certain Public Areas.

(a) A person commits an offense in violation of this article if he/she smokes or possesses a burning tobacco, weed or other plant product in any of the following indoor and/or enclosed areas:

- (1) a public or private preschool, primary or secondary school; or
- (2) elevators, museums, libraries, galleries, public transportation facilities open to the public and service lines of establishments doing business with the general public; or
- (3) hearing rooms, conference rooms, meeting rooms or any public service area of any facility owned, operated or managed by Frisco in which business is conducted, when the public business requires and/or provides an opportunity for direct participation and/or observation by the general public; or
- (4) any building or sports arena which is used for or designated for the purpose of exhibiting any motion picture, stage drama, lecture, musical recital, athletic event or any other event whenever open to the public, including all restrooms and any area commonly referred to as a lobby; however, smoking, which is a part of a stage performance, is permitted; or
- (5) any retail or service establishment serving the general public, including but not limited to, any food products establishment, department store, restaurant, grocery store, private club, bingo parlor, bowling center, drug store, shopping mall, hair styling salons, including service lines; or
- (6) all restrooms open for public use; or
- (7) all areas in a laundromat open to and available to use by the public; or
- (8) within all areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including, but not limited to, commercial, financial and professional offices, including banks, hotels and motels; or
- (9) within twenty (20) linear feet of any entrance of any facility where smoking is prohibited.

SECTION 4: Amendment to Frisco Code of Ordinances, Chapter 54, Article II (Regulation of Smoking), Section 54-23 (Compliance) and Frisco Ordinance No. 00-12-12.
Frisco Code of Ordinances, Chapter 54, Article II (Regulation of Smoking), Section 54-23 (Compliance) is hereby amended to read as follows:

54-23. Compliance

- (a) The building official, Code Enforcement, or other city official designated by the City Manager, shall be responsible for compliance with this article as to facilities which are owned, operated or leased by the city. The building official shall provide each applicant applying for a non-residential certificate of occupancy with a copy of this article.
- (b) The owner, operator, person in charge or manager of any facility regulated by this article shall comply with the provisions of this article.
- (c) The building official, Code Enforcement, or other city official designated by the City Manager, in his sole discretion, may enforce this article by any of the following actions:
 - (1) Serving written notice on the owner, operator, person in charge or manager of any facility, business or agency within the purview of this article, requiring the correction, within a specified reasonable time frame, of any violation of this article;
 - (2) Requesting the city attorney to maintain an action for injunction to enforce the provisions of this article, to cause the correction of any such violation and for assessment and recovery of a civil penalty of such violation, including attorneys' fees; or
 - (3) Issuing a municipal court citation to any violator of this article.

The remedies contained herein are cumulative of and in addition to any other remedies that are available to the city at law or in equity.

- (d) Any person may file a complaint with the city to initiate enforcement by the city.
- (e) In undertaking the enforcement of this article, the city is assuming an undertaking only to promote the general health, safety and welfare of its citizens. The city is not assuming any duty or obligation, nor is it imposing any duty and/or obligation on its officers and/or employees, nor is it liable in money damages or otherwise to any person who claims that the city and/or one of its officers and/or employees breached any such obligation, and the breach proximately caused injury.

(f) This article shall not be interpreted nor construed to permit smoking where it is otherwise restricted by other applicable laws.

SECTION 5: Amendment to Frisco Code of Ordinances, Chapter 54, Article II (Regulation of Smoking), Section 54-24 (Where Smoking is Not Prohibited) and Frisco Ordinance No. 00-12-12. Frisco Code of Ordinances, Chapter 54, Article II (Regulation of Smoking), Section 54-24 (Where Smoking is Not Prohibited) is hereby amended to read as follows:

54-24. Where Smoking is Not Prohibited. Notwithstanding any other provision of this Ordinance to the contrary, smoking is not prohibited in the following areas:

- (1) private residences, except when used as a licensed child care, adult day care or health care facility; or
- (2) hotel and motel rooms rented to guests, if permitted by the hotel or motel; or
- (3) retail tobacco stores that have an enclosed, separately ventilated smoking room that exhausts directly to the outside environment; or
- (4) any area exterior to the building in which the establishment or facility is located, except as otherwise regulated under section 54-20(a)(9); or
- (5) in the designated smoking areas of any food products, retail or service establishment serving the general public which has, prior to the effective date of this Ordinance, provided a designated smoking area equipped with a functional air purification system or functional separate ventilation system and the functional air purification system or functional separate ventilation system was installed not more than five (5) years prior to the effective date of this Ordinance. This exception allowing such a smoking area shall no longer apply to an establishment upon the fifth anniversary of the date the functional air purification system or functional separate ventilation system was installed at the premises. During the time this exception does apply, such systems shall:
 - (i) have a negative pressure on the area designated for smoking to prevent air from a smoking area to be drawn across or into the non-smoking area; and (ii) provide a total air exchange every fifteen (15) minutes and shall exhaust that air to the exterior of the building. In addition, a sign must be posted on the premises in a conspicuous place to advise the public that smoking is permitted in the designated smoking area. Designated

smoking areas shall not include restrooms, service lines, public telephone areas, and other areas commonly used by all patrons, including access thereto (called "Common Areas").

SECTION 6: Amendment to Frisco Code of Ordinances, Chapter 54, Article II (Regulation of Smoking), Section 54-25 (No Commingling of air/testing Requirements) and Frisco Ordinance No. 00-12-12. Frisco Code of Ordinances, Chapter 54, Article II (Regulation of Smoking), Section 54-25 (No Commingling of air/testing Requirements) is hereby amended to read as follows:

Sec. 54-25. No commingling of air/testing requirements.

It is the intent of this article to define distinct and separate areas for smoking and nonsmoking use to assure a smoke free atmosphere in nonsmoking areas and prohibit the commingling of air between such areas. All air purification systems, air barrier systems and air ventilation systems for designated smoking areas permitted by this article shall be tested and such test shall be observed by the building official at the time of installation and at least once every six months thereafter to ensure compliance with this article.

SECTION 7: Amendment to Frisco Code of Ordinances, Chapter 54, Article II (Regulation of Smoking), Section 54-26 (Penalty Provision) and Frisco Ordinance No. 00-12-12. Frisco Code of Ordinances, Chapter 54, Article II (Regulation of Smoking), Section 54-26 (Penalty Provision) is hereby amended to read as follows:

54-26. Violations and penalties.

- (a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with all of its provisions, except for violations noted in subsection (b) of this section 54-26.
- (b) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article.
- (c) Any person who violates any provision of this article shall be guilty of an offense punishable by:
 - (1) A fine not exceeding one hundred (\$100.00) dollars for the first violation;
 - (2) A fine not exceeding two hundred (\$200.00) dollars for a second violation within a one year period of the first violation.

- (3) A fine not exceeding five hundred (\$500.00) dollars for an additional violation within a one year period of the first violation.

SECTION 8: Amendment to Frisco Code of Ordinances, Chapter 54, Article II (Regulation of Smoking) to add Smoke Free Work Environment Regulations. Frisco Code of Ordinances, Chapter 54, Article II (Regulation of Smoking) is hereby amended to add the following regulations regarding smoke free work environments (said section to be numbered when added to the Code):

Prohibition of Smoking in Places of Employment.

- (a) It shall be the responsibility of employers to provide a smoke-free workplace for all employees.
- (b) Each employer having any enclosed place of employment located within the city shall adopt, implement, make known and maintain a written smoking policy, which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- (c) The smoking policy shall be communicated to all employees within four weeks of its adoption.
- (d) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

SECTION 9: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 10: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Frisco hereby declares that it would have passed this Ordinance, and each

section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

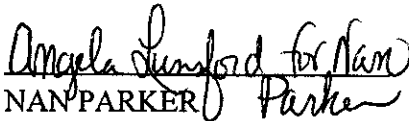
SECTION 11: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by the City Charter and by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this 7th day of November, 2006.

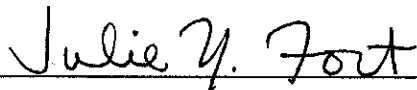



E. MICHAEL SIMPSON, Mayor

**ATTESTED TO AND
CORRECTLY RECORDED BY:**


NAN PARKER
City Secretary

APPROVED AS TO FORM:


ABERNATHY, ROEDER, BOYD & JOPLIN, P.C.
JULIE Y. FORT
City Attorneys

DATES OF PUBLICATION: 11/10/2006 * 11/17/06, Frisco Enterprise